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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,370	03/26/2004	Hideki Sakurai	826.1936	7627
21171	7590	10/04/2007		
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			EXAMINER TRUONG, THANHNGA B	
			ART UNIT 2135	PAPER NUMBER
			MAIL DATE 10/04/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/809,370

Applicant(s)

SAKURAI ET AL.

Examiner

Thanhnga B. Truong

Art Unit

2135

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/26/04 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is responsive to the communication filed on July 19, 2007. Claims 1-9 are pending. At this time, claims 1-9 are rejected.

Response to Arguments

2. Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 7 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

a. *Referring to claims 7:*

Claim 7 recites "a carrier signal that carries a program for a computer to apply revision information to software in a system that dynamically assigns software to a plurality of servers to perform customer services." This claim is clearly directed toward a software program and they are non-statutory as not being tangibly embodied in a manner so as to be executable. Furthermore, intangible media such as signals, carrier waves, transmissions optical waves, transmission media incapable of being touched or perceived absent the tangible medium through which they are conveyed. Therefore, claim 7 recites a non-statutory subject matter..

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singh et al (US 7,155,462 B1), and further in view of Crawford (US 6,014,651).

a. Referring to claim 1:

i. Singh teaches an apparatus for applying revision information to software in a system that dynamically assigns software to a plurality of servers to perform customer services (see Figure 2A), comprising:

(1) a calculation device calculating an index into which a newness of a software that a customer is using and a security level of the software have been integrated, by using information provided when revision information is issued (**see Figure 2A and column 2, lines 25-58 of Singh**);

(2) a storing device storing a restricting condition for the index that is designated by the customer (**column 2, lines 59-64 of Singh**); and

(3) an application device checking whether the calculated index satisfies the restricting condition, and applying the revision information to the software that the customer is using to update the software if the calculated index does not satisfy the restricting conditions (**column 2, line 64 through column 3, line 21 of Singh**).

ii. Although Singh teaches an apparatus for applying revision information to software in a system that dynamically assigns software to a plurality of servers to perform customer services (see Figure 2A), Singh is not clear on the capability of showing new software is used by customer and a security level of the software have been integrated. On the other hand, Crawford teaches this limitation in **column 12, lines 62-67; column 9, lines 64-67 of Crawford**.

iii. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to:

(1) have modified the invention of Singh (if indeed is not inherently) with the teaching of Crawford since the updating and migration processes described above are quite error prone, and it is generally not a simple task to return to the last good configuration of software and client data if an error in a newer version of the software is discovered (**column 1, lines 55-59 of Singh**).

iv. The ordinary skilled person would have been motivated to:

(1) have modified the invention of Singh (if indeed is not inherently) with the teaching of Crawford for easy tracking the old and new version of the software in case of error occurring during software testing.

b. Referring to claim 2:

i. This claim consist a computer readable recording medium recording a program for a computer to apply revision information to software in a system that dynamically assigns software to a plurality of servers to perform customer services to implement claim 1, thus it is rejected with the same rationale applied against claim 1 above.

c. Referring to claim 3:

i. Singh further teaches:

(1) further comprising preparing a same software configuration as that of a target server in which the software the customer is using is operating in an unused server that has not been assigned to any customer yet, applying the revision information to the software that the customer is using in the unused server, and assigning the unused server instead of the target server to the customer in order to update the software (**column 1, line 62 through column 2, line 11 of Singh**).

d. Referring to claims 4, 6:

i. These claims have limitations that is similar to those of claim 3, thus they are rejected with the same rationale applied against claim 3 above.

e. Referring to claim 7:

i. This claim consist a carrier signal that carries a program for a computer to apply revision information to software in a system that dynamically assigns software to a plurality of servers to perform customer services to implement claim 1, thus it is rejected with the same rationale applied against claim 1 above.

f. Referring to claim 8:

i. This claim consist a method for applying in which revision information to software by a computer in a system that dynamically assigns software to a plurality of servers to implement claim 1, thus it is rejected with the same rationale applied against claim 1 above.

Art Unit: 2135

g. Referring to claim 9:

i. This claim has limitations that is similar to those of claim 1, thus it is rejected with the same rationale applied against claim 1 above.

h. Referring to claim 5:

i. The combination of teaching between Singh and Crawford teaches the claimed subject matter. They further teach:

(1) wherein the program makes the computer execute the processes of extracting a date and a degree of importance of the revision information from information provided when the revision information is issued and calculating the index using the extracted information (**column 10, lines 31-47 of Singh; column 27, lines 15-21 and lines 63-67; column 29, lines 8-11 of Crawford**).

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanhnga (Tanya) Truong whose telephone number is 571-272-3858.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached at 571-272-3859. The fax and phone

Art Unit: 2135

numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2100.

Chandra B. Tm
Primary Examiner

TBT

September 30, 2007